

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JAMES TERRY III,

Petitioner,

ORDER

v.

08-cv-0496-bbc

PETER HUIBREGTSE, Warden,  
Wisconsin Secure Program Facility,

Respondent.

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James Terry III, an inmate at the Wisconsin Secure Program Facility, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. I have granted his petition for leave to proceed in forma pauperis in a separate order. Petitioner was convicted in Dane County Circuit Court on September 9, 1999. One count of the original judgment was overturned on appeal and a second judgment was entered on September 4, 2001. Petitioner was convicted of six counts: first-degree sexual assault by use of a dangerous weapon, soliciting a child for prostitution, child enticement, kidnaping, false imprisonment and theft.

This conviction was the subject of a habeas petition filed by petitioner in this court on July 27, 2007. Terry v. Huibregtse, 07-C-412-S. District Judge John Shabaz denied that petition on September 6, 2007, with prejudice, on the ground that it was untimely. The instant petition is petitioner's second petition challenging his September 4, 2001 conviction.

According to 28 U.S.C. § 2244(b)(3)(A), a petitioner may not file a second or

successive application for habeas relief in the district court unless he first seeks and obtains an order from the appropriate court of appeals authorizing the district court to consider the application. Petitioner has not obtained an order from the Court of Appeals for the Seventh Circuit authorizing him to file his petition. In the absence of such an order, this court has no authority to consider the petition.

ORDER

IT IS ORDERED that the petition of James Terry III for a writ of habeas corpus is DISMISSED WITHOUT PREJUDICE for petitioner's failure to obtain the authorization required by 28 U.S.C. § 2244(b)(3)(A).

Entered this 29<sup>th</sup> day of August, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge